

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8187 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HEIRS OF RANCHHODBHAI RAMJIBHAI ZINZUVADIA

Versus

COMPTENT AUTH. & EX-OFFICIO DY. COLLECTOR

Appearance:

Shri P.J. Vyas, Advocate, for the Petitioner
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondent

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (the respondent herein) on 18th November 1988 but communicated on 16th December 1988 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as substantially affirmed in appeal by the

order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 28th May 1990 in Appeal No. Ahmedabad-19 of 1989 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, the respondent declared the holding of the predecessor-in-title (the deceased for convenience) of the petitioners to be in excess of the ceiling limit by 2917.26 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Ahmedabad. It included one property within the urban agglomeration of Vadodara. That form was processed. Earlier the respondent declared the holding of the deceased not to be in excess of the ceiling limit. That order was taken in suo motu revision by the State Government under sec. 34 of the Act and the matter was remanded to the respondent for his fresh decision according to law. It appears that thereafter, by his order passed on 18th November 1988 and communicated on 16th December 1988, the respondent declared the holding of the deceased to be in excess of the ceiling limit by 2917.26 square meters. Its copy is at Annexure E to this petition. The aggrieved deceased carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-19 of 1989. By the order passed on 28th May 1990 in the aforesaid appeal, the appellate authority substantially affirmed the order at Annexure E to this petition. A copy of the appellate order is at Annexure F to this petition. The aggrieved deceased thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the impugned order at Annexure E to this petition as substantially affirmed in appeal by the appellate order at Annexure F to this petition. The deceased breathed his last during the pendency of this petition leaving behind him the present petitioners as his heirs and legal representatives. They have been impleaded in this writ petition in the place of the deceased.

3. The grievance of the petitioners is that at the time of hearing several documents were produced in the case before the respondent. Those documents are listed in para 15A in the memo of petition. They are annexed collectively at Annexure G to this petition. The grievance voiced by and on behalf of the petitioners is to the effect that even the appellate authority did not

consider the documentary evidence on record for the purpose of finding out its effects on the merits of the case. No counter has been filed to the averment made by the petitioner in para 15A of the memo of petition. In that view of the matter, the uncontroverted averments in that regard will have to be accepted. If the documentary evidence at Annexure G collectively is not considered by the authorities below, their impugned orders at Annexures E and F to this petition can be said to be suffering from the vice of non-application of mind on their part.

4. It transpires from the documentary evidence at Annexure G collectively to this petition that the property listed at Serial No. 1 in the order at Annexure A to this petition was a constructed property. The valuation report in that regard shows that it was a constructed property some time in 1971. It also appears that the properties shown at serial No. 6 in the impugned order at Annexure E to this petition were also constructed properties. That becomes clear from the wealth-tax assessment of 1972-73 produced along with the documentary evidence at Annexure G collectively. The constructed properties together with the land appurtenant thereto will have to be excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. The authorities below have not applied their mind to this aspect of the case.

5. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures E and F to this petition cannot be sustained in law. They have to be quashed and set aside. The matter will have to be remanded to the respondent for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (the respondent herein) on 18th November 1988 and communicated on 16th December 1988 at Annexure E to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th May 1990 in Appeal No. Ahmedabad-19 of 1989 at Annexure F to this petition is quashed and set aside. The matter is remanded to the respondent for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

